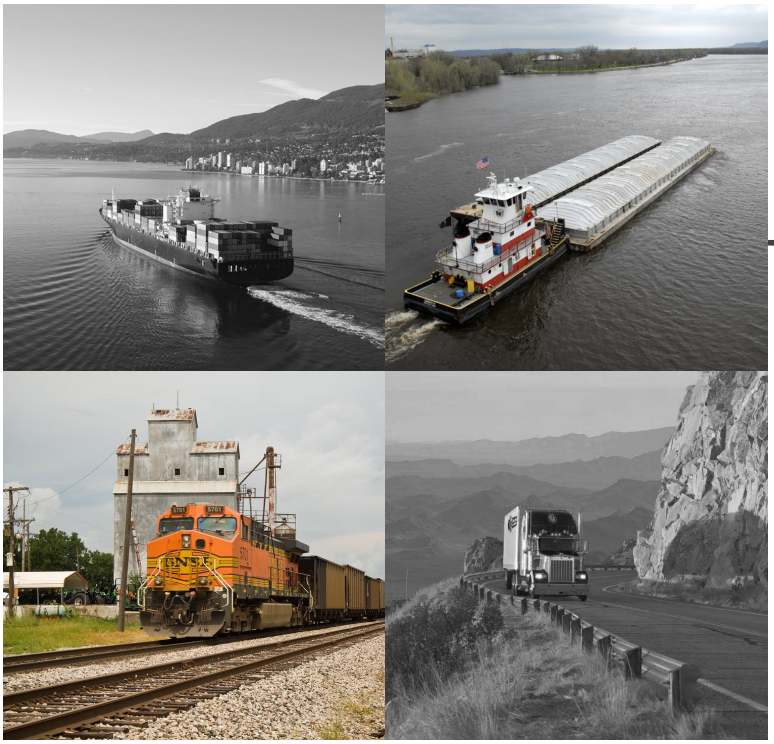
United States Department of Agriculture



Transportation Updates and Regulatory News (TURN)

A quarterly publication of the Agricultural Marketing Service
www.ams.usda.gov/rules-regulations/transportation/turn
March 2017

Regulatory Freeze Pending Review

On January 20, 2017, Reince Priebus, Assistant to the President and White House Chief of Staff, issued a Memorandum for the Heads of Executive Departments and Agencies regarding the Regulatory Freeze Pending Review. The purpose of the memo was to ensure the President's appointees or designees have a 60-day opportunity to review any new or pending regulations for any questions of fact, law, and policy they raise. On January 24, 2017, Mark Sandy, Acting Director, Office of Management and Budget (OMB), issued a Memorandum: Implementation of Regulatory Freeze. In addition to the 60-day review period, this memo instructs agencies as follows: "Where appropriate and as permitted by applicable law, you should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60 day period. In cases where the effective date has been delayed in order to review questions of fact, law, or policy, you should consider potentially proposing further notice-and-comment rulemaking." There are two exceptions to the regulatory freeze. The first is for any regulations "subject to statutory or judicial deadlines." These are regulations where performing the otherwise required review actions would endanger compliance with an operative statutory or judicial deadline. The second exception is for "emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise."

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

On January 30, 2017, President Trump stated, "it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. For fiscal year 2017, which is in progress,

the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget. Any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law." The executive order establishes regulatory procedures for fiscal year 2018 and subsequent fiscal years. On February 2, 2017, OMB provided interim guidance on implementing Section 2 of the Executive Order. On February 8, 2017, several groups filed a complaint for declaratory and injunctive relief against the executive order with the United States District Court for the District of Columbia.

Effective Date of Rule for Entry-Level Commercial Drivers' Training Delayed

On February 1, 2017, the Federal Motor Carrier Safety Administration (FMCSA) temporarily extended the effective date of its final rule on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators to March 21, 2017, in response to the White House regulatory freeze memorandum. The compliance date, February 7, 2020, remains unchanged. The Government Accountability Office reviewed the final rule in accordance with the Congressional Review Act, which requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. The final rule responds to a statutory mandate imposed under the Moving Ahead for Progress in the 21st Century Act. FMCSA based the final rule on consensus-negotiated rulemaking conducted by FMCSA's Entry-Level Driver Training Advisory Committee, which held a series of meetings between February and May 2015. On December 21, 2016, several groups filed a petition with FMCSA to reconsider the lack of minimum behind-the-wheel provisions in the final rule.

Electronic Logging Devices for Commercial Truck and Bus Industries Update

On January 11, 2017, the U.S. Court of Appeals for the Seventh Circuit denied the Owner-Operator Independent Drivers Association's (OOIDA) December 16, 2016 request for a full court rehearing of OOIDA's petition for review of the FMCSA final rule on electronic logging devices (ELD). A three-member panel of the court denied OOIDA's petition on October 31, 2016, following the oral arguments on September 13, 2016. OOIDA maintains that the final rule unlawfully allows ELDs that are not fully automatic; does not sufficiently protect drivers from harassment; inadequately analyzes costs and benefits; does not protect drivers' confidential information; and exposes drivers to unconstitutional searches and seizures.

Greenhouse Gas and Fuel Efficiency Standards for Engines and Vehicles Update

On December 22, 2016, the Truck Trailer Manufacturers Association (TTMA) filed a petition for review of the final rule, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2. TTMA is asking the U.S. Court of Appeals for the District of Columbia Circuit to vacate the

section of the rules that require trailer manufacturers to provide aerodynamic equipment, low rolling resistant tires, and tire pressure monitoring or automatic tire inflation systems beginning with model year 2018. The trailer rules are designed to reduce the carbon dioxide emissions and fuel consumption of tractor-trailers traveling at highway speeds. Previous TTMA comments expressed strong concerns about the statutory authority to regulate trailers and trailer manufacturers and assumptions made by the Environmental Protection Agency and the National Highway Transportation Safety Administration. The comments questioned the cost and benefit calculations, and the limited time allowed to provide comments on the proposed rule. Trailer-related comments on the proposed rule were also submitted by: Utility Trailer Manufacturing Company, Great Dane, Wabash National Corporation, Stoughton Trailers, Owner-Operator Independent Drivers Association (OOIDA), and American Trucking Associations. Eight States filed a motion to intervene in the case on January 23, 2017 in support of the final rule.

U.S./Mexico Cross-Border Trucking Update

OOIDA announced that on March 15, 2017, the U.S. Court of Appeals for the Ninth Circuit in California will hear oral arguments in OOIDA's challenge to the U.S.-Mexico Cross-Border Trucking Pilot Program. On February 8, 2016, OOIDA filed its Intervenors Reply Brief in concert with the International Brotherhood of Teamsters, Advocates for Highway and Auto Safety, and Truck Safety Coalition's Reply Brief. These briefs challenge the decision of FMCSA to open the border to Mexican trucks. The lawsuit, filed with the Court on March 10, 2015, contends that FMCSA's final report to Congress, which allowed opening the border to Mexican trucks, violated the Administrative Procedures Act.

California Air Resources Board Greenhouse Gas Regulations Update

OOIDA announced that on April 19, 2017, the U.S. Court of Appeals for the Ninth Circuit in California will hear oral arguments in OOIDA's tractor-trailer greenhouse gas regulations (GHG) case against the California Air Resources Board (CARB). On March 7, 2016, OOIDA filed an Appellant's Reply Brief with the Court on the petition for review concerning OOIDA's objections to the U.S. Environmental Protection Agency greenhouse gas waiver, and CARB's associated GHG regulations. At issue is whether CARB's enforcement of the GHG regulations on out-of-State-based trucks that briefly enter California to conduct interstate commerce is a violation of the Commerce Clause of the U.S. Constitution. Some California-based trucks are exempt from the GHG regulations, even though these California-based trucks travel more miles inside California than the out-of-State-based trucks that briefly enter California.

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